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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,136	03/30/2001	Vincent T. Kozyski	6611-01	8251

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EXAMINER

PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,136

Applicant(s)

KOZYRSKI ET AL.

Examiner

Jason Prone

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,13 and 25-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,4-6,13 and 25-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-6, 13, and 25-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Belcourt (4,733,472).

Claims 1 and 4-6:

In regards to claim 1, Belcourt discloses the same invention including a hand held rotary cutter capable of cutting thin non-metallic sheet materials, with a handle having a handgrip portion (Column 1, line 10 states a “manual...means for opening cans have been in use for many years” therefore it is inherent that a hand gripping portion is incorporated), a circular cutting blade having a symmetrical cutting edge (41 and Column 2 line 11 discloses the blade as a circular blade. Circles are symmetrical), a diameter (see Fig. 4), and a thickness (see Fig. 4), the cutting blade is pivotally mounted to the handle (see Fig. 5) and the diameter of the cutting blade is not greater than fifteen times the thickness (Fig. 2 and Fig. 4).

In regards to claims 4 and 5, Belcourt discloses the cutting edge includes an edge angle that is substantially equal to 45° (Column 2, lines 54-56 and 61-63 {C+D= 45°}).

In regards to claim 6, Belcourt discloses the diameter of the cutting blade is substantially equal to six times the thickness (see Fig. 4 {Blade 40 incorporates multiple thicknesses ranging from the thickest at point 45 to the thinnest at point 41. The diameter is less than six times the thickness at point 45 and is more than six times the thickness at point 41. The blade 40 has a diameter that fits the "six times" ratio in-between points 45 and 41}).

Claim 13:

Belcourt discloses the same invention including a hand held rotary cutter capable of cutting thin non-metallic sheet materials with a handle having a handgrip portion (Column 1, line 10 states a "manual...means for opening cans have been in use for many years" therefore it is inherent that a hand gripping portion is incorporated), a replaceable cutting blade (40 and Column 3, 2nd full paragraph) and clip assembly (35 and 32), the cutting blade includes thickness (see Fig. 4), a diameter not greater than fifteen times the thickness (see Fig. 4), a symmetrical (Column 2 line 11 discloses the blade as a circular blade. Circles are symmetrical) cutting edge having an edge angle that is not less than 40° and not greater than 50° (Column 2, lines 54-56 and 61-63 {C+D= 45°}), the cutting blade is rotatably mounted on the clip assembly (see Fig. 5), and the cutting blade and clip assembly is attached to the handle and can be selectively replaced (see Fig. 5).

Claims 25-27:

In regards to claim 25, Belcourt discloses the same invention including a hand held rotary cutter capable of cutting thin non-metallic sheet materials with a handle

Art Unit: 3724

having a handgrip portion (Column 1, line 10 states a "manual...means for opening cans have been in use for many years" therefore it is inherent that a hand gripping portion is incorporated), a circular cutting blade having a symmetrical cutting edge (41 and Column 2 line 11 discloses the blade as a circular blade. Circles are symmetrical), a diameter (Fig. 4), and a thickness (Fig. 4), the cutting blade is pivotally mounted to the handle (Fig. 5).

In regards to claims 26 and 27, Belcourt discloses the cutting edge includes an edge angle that is substantially equal to 45° (Column 2 lines 54-56 and 61-63 {C+D= 45° }).

Claims 28-32:

In regards to claims 28-30, Belcourt discloses the same invention including a cutting blade capable of cutting thin non-metallic sheet materials (40) comprising a body having a diameter and a thickness (44), a symmetrical cutting edge extending around the periphery of the body (41 and Column 2 line 11 discloses the blade as a circular blade. Circles are symmetrical), the cutting edge includes an edge angle that is substantially equal to 45° (Column 2, lines 54-56 and 61-63 {C+D= 45° }), an axial aperture that extends side to side through the thickness of the body (48), and the diameter is not greater than fifteen times the thickness (Fig. 4).

In regards to claim 31, Belcourt discloses the diameter of the cutting blade is substantially equal to six times the thickness (see Fig. 4 {Blade 40 incorporates multiple thicknesses ranging from the thickest at point 45 to the thinnest at point 41. The diameter is less than six times the thickness at point 45 and is more than six times the

Art Unit: 3724

thickness at point 41. The blade 40 has a diameter that fits the "six times" ratio in-between points 45 and 41}).

In regards to claim 32, Belcourt discloses the cutting edge includes a first side and a second side surface (42 and 43) and the thickness of the body extends between the first and second side surfaces (Fig. 4).

3. Claims 1, 4, 5, and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Richter (5,758,426).

Claims 1, 4, and 5:

In regards to claims 1, 4, and 5, Richter discloses the same invention including a hand held rotary cutter with a handle having a hand grip portion (15), a circular cutting blade having a symmetrical cutting edge (21, Column 3 lines 19 discloses the blade as a wheel, and Figs. 4 and 5 clearly shows a circular wheel), a diameter (see Fig. 5), and a thickness (see Fig. 4), the cutting blade is pivotally mounted to the handle (19), the cutting edge includes an edge angle that is substantially equal to 45° (Column 4, line 1), and the diameter of the cutting blade is not greater than fifteen times the thickness (Column 4, lines 16-18).

Claims 28-30:

In regards to claims 28-30, Richter discloses the same invention including a body (21) having a diameter and a thickness (see Figs. 4 and 5), a symmetrical cutting edge extending around the periphery of the body (33, Column 3 lines 19 discloses the blade as a wheel, and Figs. 4 and 5 clearly shows a circular wheel), the cutting edge angle

that is substantially equal to 45° (Column 4, line 1), and the diameter of the cutting blade is not greater than fifteen times the thickness (Column 4, lines 16-18).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-6, 13, and 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belcourt in view of Liebscher (5,581,897).

To the degree that it could be argued that the Belcourt reference does not incorporate a handle, the additional rejection is made.

Belcourt discloses the invention (see above rejection), however, fails to disclose a handle having a handgrip portion. Liebscher teaches a handle having a handgrip portion (1). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Belcourt, with a handgrip portion, as taught by Liebscher, to provide a means of holding a manual can opener.

Response to Arguments

6. Applicant's arguments filed 31 October 2005 have been fully considered but they are not persuasive. In response to applicant's argument that Belcourt and Richter fail to teach cutting a thin non-metallic sheet material, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior

art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the blade of both Belcourt and Richter is perfectly capable of cutting a thin non-metallic sheet material such as paper. The blade in Belcourt is disclosed as a circular blade and circles are symmetrical. The blade of Richter is disclosed as wheel. Using Figure 5 and the fact that wheels are symmetrical, the blade disclosed by Richter is symmetrical. Also, item 15, in Richter, is capable of being gripped by a users hand and, therefore, is capable of being a handgrip.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

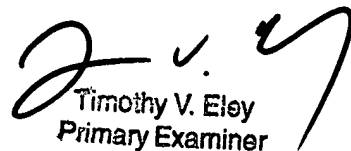
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JP
January 11, 2006



Timothy V. Eley
Primary Examiner